Crl.A. 200/2003

BEFORE

HON'BLE MR JUSTICE P.G.AGARWAL

Heard learned counsel for the appellant and the learned P.P. Assam.

2. In Sessions Case No. 187/99 the appellant Deepak Lahan was tried and convicted by the learned Additional Sessions Judge, Fast Tract Court, Biswanath Chariali for commission of offence under Section 417 Cr.P.C. and sentenced to undergo imprisonment for 6 months and to pay fine of Rs.5000/- , in default in payment of fine, to undergo further imprisonment for three months.

3. The accused appellant Dipak Lahan is a married man having his first wife named Rita Lahan, who is also a co-accused in the present case, but subsequently discharged.

4. Prosecution's allegation is that the accused had acquaintance with Smti Aruna Bepi (PW-3), as two families were known to each other and are in visiting terms. Further case of the victim is that the accused had two houses and he had promised to keep her at one place and other wife at another place and on such promise took her to his house and there he cohabited with her. She stayed with the accused for about six days. Thereafter, the first wife came and assaulted her whereupon the accused appellant arranged for her stay in the house of the V.D.P. Secretary promising to come back after two days, but did not return.

5. In case of Bipul Medhi & Ors. vs. State of Assam, 2006(3) GLT 585, the principle under which an offence under Section 417 can be established where a person fails to fulfill the promise of marriage has been broadly laid down. In the present case, admittedly accused Dipak Lahon was a married man and this fact was known to the alleged victim, a young grown up woman. The accused, as stated by the alleged victim, had promised to keep her at one place and the first wife at other place. Admittedly, Aruna knew that she cannot be married by Dipak as Dipak's spouse is living. We find support for the above from the fact that the accused had promised her that he will keep her at one place and the first wife at other place. We further find that in the present case, the accused did not drive away the victim from the shelter, but it was his first wife who refused to accept her and drove her and allegedly assaulted her. The young woman Aruna lived with the accused for about six days and during those six days had physical relationship and hence the learned trial Court did not find any material of forceful rape. Admittedly, this is a case of physical relationship with consent.

6. In view of the evidence of PW-3 Aruna Bepi and the facts and circumstances of the case, we hold that no offence under Section 417 IPC is made out and as such the appeal succeeds and the impugned order of conviction and sentence is set aside. Accused Dipak Lahon is acquitted of the charge. The accused appellant is on bail, he is not required to surrender to his bail bond.

Send down the records.